

REMARKS

The Examiner interview of February 24, 2004 is gratefully acknowledged at which the undersigned and Carolyn W. Hall attended. At that interview Ms. Hall provided the Examiner with an overview of the technologies and the Examiner was presented with the remainder of this Amendment in draft form.

At the interview the Examiner indicated allowable subject matter. Language corresponding to the allowable subject matter was agreed upon and is reflected in the present Amendment. The case is therefore in condition for allowance.

What was presented to the Examiner is reflected in the following Remarks section of the above-noted draft Amendment:

The Examiner's action of January 6, 2004 is noted in which the claims are finally rejected under 35 USC §§103 over Smith in view of Fargano. Applicants have amended Claim 25 and have canceled Claims 43 and 44 without prejudice.

Applicants claim an adaptive system for sending out guided practice activities which have been altered in response to reported behaviors of an individual who has received an initial guided practice activity. See Specification Page 5, lines 1-3.

Note that the content pushed to the individual is a scenario-based assessment consisting of a situation related to the initial guided practice activity which can be responded to by indicating what behavior the individual would use in the situation, thus to indicate effective or non-effective behavior. The behavior chosen by the individual and reported back to the database represents the individual's behavioral response to the pushed content allowing adaptive remediation when non-effective behaviors are chosen. Nowhere is this shown or taught in either Smith or Fargano.

### The Fargano Reference

By way of background, first and foremost Fargano is a testing process. The Hall et al. system is first and foremost a teaching process. In Fargano, there is no information transmitted to the individual on how to modify his performance. In Fargano there is no mechanism to loop back to review or repeat a question. In Fargano there is no mention of remediation.

Thus, Fargano does not teach; he tests.

The Fargano process is a "linear" system, meaning there is a canned set of questions offered in a predetermined sequence. The Hall et al. system is a true teaching process which loops back to change the behavioral scenarios pushed to the individual to promote learning.

More particularly, it is Applicants' contention that the Fargano patent describes a knowledge-based test that consists of test questions delivered at times set by the database that must be answered quickly in order to ensure that the learner's answers are their own and they have not received help.

Secondly, the Fargano system cannot be used to deliver the learning process described by Hall et al. because the Hall system has antithetical requirements. Most importantly, the Hall system requires delivery of guided practice activities that arrive at known times.

Thirdly, the Fargano system has no capacity to handle guided practice activities. Guided practices are not questions with right or wrong answers. Guided practices present the learner with scenarios to which the learner is to react.

Fourthly, the Fargano system has no capacity to allow the learner to control timing by specifying the known time at which the individual is to receive a guided practice activity.

Fifthly, Fargano does not and cannot assess guided practice activity. This is because simply pushing multiple choice questions that can be graded in no way involves guided practice activity.

Sixthly, Applicants contend that the Hall et al. storage, timing, and delivery of guided practice activities cannot be performed by Fargano's system. This is because his patent describes a process that requires a database and workflow process that consists of test questions catalogued by complexity and delivered sequentially with no ability to loop back to give a learner a different guided practice activity.

Seventhly, the timing of Fargano's questions is controlled by the random timing schedule established at the database. Clearly, the database and workflow designed to support Fargano could not be used by Hall's system to store, time and deliver multi-layered, iterative, guided practice activities at known times.

Further, to the extent that there is any adaptive process in Fargano, it does not adapt guided practice activities.

As mentioned above, there is not one hint of remediation in Fargano. Certainly there is no showing of Hall's adaptive process of identifying scenario-based behavioral responses and subsequently delivering adaptive learning that is iterative and spiraled (i.e. can loop back to review lessons and practice) - a process that is the definition of remediation.

The following Comparison Chart is useful in discerning the differences.

<b>Fargano</b>	<b>Hall</b>
Knowledge	Behavior
Linear, cumulative, no remediation	Spiraled, iterative, opportunities for remediation
Test questions only – no lesson component	Guided Practices following mini-lessons
Challenges (test questions)	Guided Practice Activities (behavioral practices)
Strictly Timed responses to challenges	No timing to delimit practice duration
Right – Wrong	No right or wrong – Practice to gain mastery
No help or input for learner	2-way links through the database connection, encourages interaction between learner and others
Timing designed to surprise and challenge – chosen by database	Timing designed to support and be convenient – chosen by learner
Plurality of Telephony devices - to include spoken voice messages (i.e. non-IP delivery)	Internet Protocol only – use of telephony devices secondary to our exclusive use of IP

In short, the Fargano method cannot deliver the Hall et al. system. The Fargano system will not work for the Hall et al. system because it cannot handle guided practice content or the timing controlled by the learners. This is because the content and database required to deliver Fargano's skills building process is different from that required for the Hall et al. system and is completely incompatible with Hall et al.'s process.<sup>1</sup>

Note that the Hall et al. learning process has been through a year-long Beta test demonstrating that 100% of learners received and were able to practice behaviors using this process and it is currently being used by thousands of learners, indicating substantial commercial success.

<sup>1</sup> The Hall et al. system describes a behavioral-based process that consists of guided practice activities that encourage the learner to interact with others and practice behaviors over time. All guided practice activities are delivered on a known schedule and the process will wait for learners who are on vacation or experiencing a heavy work-load. There is no requirement to perform guided practice activities in a specific time frame. Guided Practice Activities are re-introduced throughout the process and the individual is instructed to review previously practiced activities to reinforce the mastery of complete behaviors. At intervals, learners receive a scenario-based assessment asking them what they would do in various behavioral situations. Based on the behavior reported back, guided practice is adaptively sent to enhance the practice of effective behavior.

### The Smith Patent

As to the Smith patent, Smith elicits answers to a questionnaire, enters them into his matrix, generates a score, and pushes "training and development reminders periodically" based on the score.

There is no adaptive feature to Smith and there is no two-way communication between the learner and Smith's database. There is no altering of Smith's training and development reminders based on responses from an individual. There is no capability for the learner to schedule the delivery of the reminders, nor is there a lesson component connected with the reminders. Smith simply believes in his initial assessment and delivers training and reminders that are unaltered by learner progress and development. These reminders are not adaptive. Nor is there any mechanism in Smith to achieve adaptability even if Smith wanted it.

### The Combination of Smith and Fargano

As noted above, the Fargano system is a testing system which tests one's knowledge. It is not a teaching system. Specifically, Fargano does not generate guided practice activities. Note that Fargano provides a question and demands that it be answered within a very short period of time. The Fargano system is thus for knowledge testing and for no other purpose.

It is Applicants' contention that it would not be appropriate to combine a knowledge based system (Fargano) with a non-knowledge based system (Smith) largely because the behaviors that need to be taught or trained are not already known to the learner thus necessitating training. Moreover, as will be seen below, the combined references do not teach the claimed subject matter. Reconsideration of this ground of rejection is therefore requested.

More particularly, the Examiner points out what is not shown in Smith and Applicants agree. However, the Examiner asserts these deficiencies are supplied by Fargano. Applicants do not agree.

It is Applicants' position that, contrary to what the Examiner is asserting, Fargano does not specifically teach having the individual transmit back to the Internet site responses to an initial guided practice since there is no guided practice in the Fargano patent.

The Fargano patent does not specifically teach transmitting a remediative guided practice back to an individual, since there is no teaching of remediation, just testing.

The Fargano patent does not specifically teach transmitting anything to an individual at times selectable by the individual, since transmissions are made to surprise the individual.

In short, Fargano is not at all interested in guided practice, but rather in the tabulation of "correct" answers to factual questions.

It can thus be seen that the combination of Smith and Fargano does not meet the claimed subject matter. Nowhere in either reference is taught the production of adaptive guided practice activities. Neither reference teaches utilizing information from a learner to adapt any guided practice activity.

Nor would it be obvious to combine a knowledge based system with a non-knowledge based system. This is because the Fargano system will not support the non-knowledge based guided practice system claimed.

#### Conclusion

In summary, as to Smith, once one gives initial information, there is no guided practice activity which is altered based on the results of an initial guided practice activity. Smith

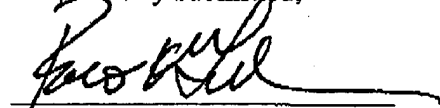
delivers periodic canned training and development reminders. Fargano adds nothing to Smith because he does not deal with guided practice activities, teaching or remediation.

In view of the above Amendment, it is abundantly clear that the references cited by the Examiner do not singly or in combination anticipate the claimed subject matter. Since the references when combined fail to teach the claimed subject matter, it is impossible that the claimed subject matter is obvious.

Note that no new matter is added and no additional search is necessary as the subject matter has already been thoroughly searched.

Since this amendment places the case in condition for allowance, allowance of the claims and issuance of the case is therefore earnestly solicited.

Respectfully submitted,



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Date: February 25, 2004